



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of S.O.,
Department of Transportation

CSC Docket Nos. 2018-1612 and
2018-1696

Discrimination Appeal

ISSUED: July 19, 2018 (WR)

S.O., an Assistant Engineer, Transportation, with the Department of Transportation, appeals the determination of the Executive Director, Division of Civil Rights and Affirmative Action, stating that the appellant failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African-American, filed a discrimination complaint against P.L., a Project Engineer Structural Evaluation and his supervisor in the Movable Bridges unit, alleging that, on the account of his national origin, race and religion, P.L. rated him a 1 (Unsatisfactory) on Quality of Work on his interim Performance Assessment Review (PAR) and was rated a 2 (Successful) for Team Work, though he had requested a 3 (Exceptional). The appellant stated that he felt pressured to sign the interim PAR because P.L. accused the appellant of sending him a harassing text message. In this regard, the appellant sent a text message to P.L. in which he complained that P.L. was singling him out for criticism due to a technical problem he had in completing his timesheet. Furthermore, in a separate discrimination complaint, he alleged that M.K., a Supervising Engineer Structural Evaluation, together with P.L., pressured him to “withdraw” his harassment statement. The appellant asserted that M.K. threatened him that if he did not withdraw the statement, he would “team up” with P.L. against the appellant and also told the appellant not to report the incident to the Division of Civil Rights and Affirmative Action or to his union.

The appellant also alleged that P.L. had asked him to consider his future in the Movable Bridges unit and noted that the appellant had failed as a civil engineer during his interview, but he was nevertheless hired due to his background in mechanical engineering. The appellant alleged that P.L.'s comments were inappropriate and created a hostile work environment. The appellant further complained that he was performing out-of-title work because he was hired as a Civil Engineer Trainee, but was performing mechanical engineering work. He also alleged that P.L. denied his request to leave the Movable Bridges unit, which the appellant claimed was disparate treatment.

The appellant further asserted that he was not afforded the same opportunity for overtime as his coworkers in March and April 2017. For instance, he detailed an incident where P.L. offered some employees six hours of overtime for the following day, but the appellant was not able to partake in the opportunity due to a schedule conflict. The appellant asserted that P.L. should have given him more notice. The following week, the appellant alleged that P.L. informed him that there was no overtime work, but when he nevertheless arrived in the office he found three coworkers working overtime. Regarding overtime work for evening inspections, the appellant complained that P.L. insisted that he follow procedures that would unnecessarily lengthen his commute. The appellant inquired whether he could shorten his commute by driving directly to the worksite, but P.L. stated that he needed to check with management and failed to inform the appellant that there would be no overtime work that evening.

The appellant also alleged that P.L. prevented him from attending mandatory training. Additionally, at a training event that he did attend, the appellant complained that P.L. indicated in a text message to a less senior coworker that P.L. would be late, which the appellant claimed exemplifies P.L.'s disrespect towards the appellant. The appellant alleged that he was excluded from a particular classroom for another training session. He alleged that he was denied the opportunity for cross-training because P.L. disapproved another team leader's request to take him into the field. Moreover, the appellant alleged that he is the only Assistant Engineer who has not used LARS or COMBIS programs and he believes that, as such, he will be at a competitive disadvantage for future promotional opportunities.

Finally, the appellant detailed an incident from May 2016 where he felt sick while looking for a field book in a State vehicle and laid himself down and fell asleep. The appellant claimed that P.L. disrespected him by not asking him if he was okay when P.L. woke him. Thereafter, P.L. asked him to sign a letter about his alleged misuse of a State vehicle during a meeting, which the appellant believed was unjustified and should be withdrawn.

In response to the appellant's complaint, the Division of Civil Rights and Affirmative Action conducted an investigation, in which the appellant, P.L. and seven other individuals were interviewed and documentation was reviewed. Regarding the appellant's PAR evaluation, the investigation determined that the appellant was rated on the same standard as other similarly situated employees. Regarding the appellant's complaint about P.L.'s response to his text message concerning his timesheet, the investigation was unable to substantiate the appellant's claim due to the absence of independent, corroborating witnesses. Similarly, it did not substantiate the appellant's complaint that P.L. stated that the appellant had failed as a Civil Engineer during his interview because P.L. did not participate in the appellant's interview. Regarding the appellant's out-of-title work claim, the investigation found that the definition contained in the job specification for the appellant's title is relatively general and includes Civil, Electrical and Mechanical degrees and therefore the appellant was not performing out-of-title duties.

With respect to the appellant's allegation that P.L. told him to think about his continued employment with the Movable Bridges unit, P.L. claimed during the investigation that, as a supervisor, he wished to ensure that his subordinates are interested in their work. He stated that he had heard rumors that the appellant was more interested in the Fixed Bridges unit. Thus, the investigation found no evidence of discrimination.

Regarding the appellant's claim that P.L. gave other employees overtime work but not him, the investigation found no evidence that the appellant was treated differently on the account of his religion, race, nationality or national origin. Additionally, the investigation found that, following the incident, the appellant and P.L. "worked together" and the appellant received three hours of overtime over two days. With respect to the appellant's complaint about traveling to a worksite for overtime work, the investigation found that P.L. was unsure about how the appellant should transport himself to the worksite and did not receive timely guidance from his superiors and therefore removed the appellant from that overtime assignment. P.L. also indicated during the investigation a business reason for not assigning the appellant overtime; he was informed that the duties that the appellant performs were not required for the overtime assignment.

The investigation further determined that P.L. did not deny the appellant mandatory load rating training. Rather, it was determined that the training was non-mandatory. Moreover, the investigation revealed that the appellant informed P.L. that the training would last one week, and P.L. allowed the appellant to attend the training. However, P.L. revoked the appellant's training when he found out that it was interfering with the appellant's duties and was scheduled to last for an additional four months. Additionally, the investigation was unable to find that P.L.'s informing a less-senior employee than the appellant that he would be late for

a different training class was motivated by a discriminatory animus towards the appellant. The investigation also determined that P.L. refused the appellant's request for cross training because another team leader refused to supply him with acceptable dates for the cross training. It further revealed that witnesses stated that nobody was excluded from a training classroom. Nevertheless, due to the appellant's concerns about promotional examination preparedness, training recommendations were made for management's consideration.

Regarding the incident where P.L. found the appellant sleeping in a State vehicle, the investigation did not attempt to determine whether it was appropriate of P.L. to have considered the incident as misuse of a State vehicle. Rather, it reviewed how P.L. handled the incident. It was revealed that while the appellant received verbal counseling, he did not suffer any adverse employment actions.

On appeal to the Civil Service Commission (Commission), the appellant reiterates his claims concerning P.L. and M.K. The appellant also contends that P.L. discriminated against him regarding overtime in June and July 2017. The appellant further asserts that P.L. threatened to "reopen" his PAR and "write degrading comments" if he did not withdraw his accusation of harassment and indicates he has audio recordings of P.L.'s threat. The appellant alleges that P.L. "deprived" him of a "sensitive work assignment" because he lives close to bridges under inspection in Newark. He also complains that P.L. needlessly required him to report to Trenton before traveling back to Newark to perform his work duties. Finally, the appellant states that he believes many black people, "especially the Christians," in his unit have already suffered similar discrimination.

In response, the Division of Civil Rights and Affirmative Action summarizes the investigation's findings. The Division of Civil Rights and Affirmative Action contends that the appellant's claims of overtime discrimination in June and July 2017 and P.L.'s threat to amend his PAR if the appellant did not withdraw his harassment allegation are new issues that were not raised in his complaint or during his interview. Similarly, it states that the appellant raised his claim that P.L. deprived him of sensitive work assignments in a retaliation complaint that is currently pending. For the foregoing reasons, the Division of Civil Rights requests that the appellant's appeal be denied.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation,

gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)3.*

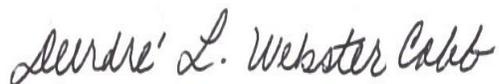
The Commission has conducted a review of the record and finds that an adequate investigation was conducted. While the appellant reiterates his claims on appeal, he has not presented any evidence whatsoever to support his claims of discrimination. For instance, while P.L. may have treated the appellant differently than other employees regarding overtime assignments or training requests, the appellant has presented no evidence that P.L. acted so on the account of the appellant's national origin, race or religion. In this regard, it appears that the appellant concluded his race, national origin and religion are the basis of his disputes with P.L. and M.K. However, a finding of a violation of the State Policy requires a discriminatory act. As indicated above, the appellant has failed to provide any evidence of a discriminatory act. The appellant has therefore failed to meet his burden of proof in this matter. *See N.J.A.C. 4A:7-3.2(m)3.* Accordingly, under these circumstances, no basis exists to find a violation of the State Policy.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18th DAY OF JULY, 2018



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